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REPORT
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# DECLARING THAT CERTAIN LANDS LOCATED IN CALIFORNIA AND HELD BY THE SECRETARY OF THE INTERIOR ARE LANDS HELD IN TRUST FOR THE BENEFIT OF CERTAIN BANDS OF INDIANS AND TO DECLARE SUCH LANDS TO BE PART OF THE RESERVATION WITH WHICH THEY ARE CONTIGUOUS

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SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

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Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

## REPORT

[To accompany H.R. 3621]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 3621) to declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of certain bands of Indians and to declare such lands to be part of the reservation with which they are contiguous, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

### PURPOSE

Title I of H.R. 3621 declares certain lands currently administered by the Secretary of the Interior to be held in trust for the benefit of 11 Indian tribes of Southern California. Title II incorporates the contents of S. 721, the Indian Development Finance Corporation Act, with amendments. Senate Report 100-306, the Indian Development Finance Corporation Act report, provides a thorough discussion of S. 721.

### BACKGROUND

Under Title I of the bill, approximately 5,069.37 acres of Federal land currently administered by the Bureau of Land Management (BLM) will be transferred to 11 Indian tribes located in San Diego and Riverside Counties in Southern California. These lands are adjacent to or contiguous with the existing reservations of the 11 tribes. Because of their proximity to the reservations, the BLM offered to sell the tracts to the tribes. However, the tribes have been



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unable to secure the necessary funding to purchase the lands and have thus asked for legislation to transfer the lands into trust for their benefit.

The current policy of the BLM is to sell isolated tracts of Federal lands where such lands are difficult to administer. The acres that are subject to transfer under the bill are isolated tracts that are cumbersome to administer because of their geographical distance from larger tracts of BLM lands.

The Indian tribe to which the lands will be transferred are proposing to use the land for housing and economic development purposes. The affected tribes and the approximate amounts of land each will acquire under the bill are set forth below:

1. Barona Group of Capitan Grande Band: 722.86 acres
2. Cahuilla Band: 611.88 acres
3. Campo Band: 470.28 acres
4. La Jolla Band: 355.51 acres
5. La Posta Band: 84.20 acres
6. Mesa Grande Band: 800 acres
7. Morongo Band: 107 acres
8. Pala Band: 415 acres
9. Pechanga Band: 302.64 acres
10. Rincon Band: 320 acres
11. Soboba Band: 880 acres

According to the Department of the Interior, the estimated fair market value of the lands may be $4 million. Although the bill originated as an agreement between the local offices of the BLM and the Bureau of Indian Affairs, the Administration opposes it. At the House hearing in June, the Department of the Interior testified that it does not support the bill because of its policy or requiring payment for all transfers of public lands. The Committee notes a number of precedents for transferring public lands without cost to Indian tribes. There were six such bills in each of the 98th and 99th Congresses, including the following:

Public Law 99-600—Zia Pueblo
Public Law 99-662—Fort Berthhold Affiliated Tribes
Public Law 99-389—Reno Sparks Colony
Public Law 98-282—Makah Tribe
Public Law 98-219—Paiute Tribe of Utah
Public Law 98-173—Kaw Tribe

So far, in the 100th Congress, lands have been transferred to the Pechanga Band (P.L. 100-381) and the Grande Ronde Confederated Tribes (P.L. 100-425).

For the legislative history, the Committee would like to clarify a point in the House Report on this bill (H. Rept. 100-811). In explaining a House amendment made to the original bill, it was stated that the Colorado River Aqueduct will be bordered on either side by the Barona Reservation. The correct reference should have been to the Morongo Reservation.

Under Title II, S. 721, the Indian Development Finance Corporation Act, has been amended to incorporate recommendations made during a May 5, 1988 hearing in the House Interior Committee on H.R. 4248, the House companion bill to S. 721. The Administration testimony, in particular, is the basis for the proposed changes. Ad-

ditionally, House Interior Committee staff has coordinated efforts with Senate Indian Affairs staff in recommending changes.

## Legislative History

H.R. 3621 was introduced on November 9, 1987, by Representative Hunter for himself and Representatives Packard and McCandless. The House Interior and Insular Affairs Committee held a hearing on June 21, 1988. The bill, with two amendments, passed the House on August 8, 1988 and was referred to the Select Committee on Indian Affairs on August 10. The Committee agreed to dispense with the requirement for a hearing because the measure has the full support of the California congressional delegation and all the tribes involved, as well as the local governmental agencies where the land is located. The Select Committee on Indian Affairs approved H.R. 3621 in a markup on September 14, 1988. On September 29, 1988, the Committee reopended H.R. 3621 for the purpose of amending it by adding a new title, Title II, the Indian Development Finance Corporation Act, with a few changes. The Senate passed S. 721 on April 20, 1988. The House Interior Committee, which has under consideration H.R. 4248, companion legislation to S. 721, will not be able to send this bill to the floor of the U.S. House of Representatives due to a policy adopted by the House Interior Committee that any legislation to be considered during the remaining session of Congress must have been approved in committee by August 5, 1988. By amending S. 721 to a bill that has already passed the House, the full House will have an opportunity to consider S. 721 during this session of Congress. Reference should be made to Senate Report 100–508 for a thorough discussion of S. 721.

## Committee Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on September 14, 1988, by unanimous vote and with a quorum present, recommends that the Senate pass H.R. 3621. On September 29, 1988, the Select Committee on Indian Affairs, in open business session, by unanimous vote and with a quorum present, recommends that the Senate pass H.R. 3621 as amended.

## Section-by-Section Analysis

### TITLE I—SOUTHERN CALIFORNIA INDIAN LAND TRANSFER

Section 1 cites the Act as the "Southern California Indian Land Transfer Act".

Section 2(a) provides that, subject to section 3, all interests of the United States in the lands described in (b) will be held in trust for the benefit of the Indian Bands listed in (b) and will be made part of the Bands' reservations.

Section 2(b) describes the division of the 5,069 acres of land among the 11 Bands.

Section 3(a) provides for preservation of any rights to or in the land held by any person prior to the date of enactment.

Section 3(b) provides that any person holding a grazing permit or lease in any of the lands to be transferred will have the right to purchase such lands within one year after date of enactment. If

lands are purchased, proceeds from the sale will be held in trust for the appropriate Band.

Section 3(c) provides that rental or royalty proceeds due to the U.S. shall, after date of enactment, be made available to the appropriate Indian band.

Section 3(d) provides that lands added to the Bands' reservations shall be subject to the same laws that are now applicable to such reservations.

### TITLE II—INDIAN DEVELOPMENT FINANCE CORPORATION

Following is a section-by-section analysis of the changes only. For a complete section-by-section analysis reference should be made to Senate Report 100–306.

Section 203(a)(3). The "reservation" has been changed to exclude land held by any Alaska Native village or regional or village corporation to more accurately reflect the commonly understood meaning of the term. Land held by any Alaska Native village or regional or village corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) is referenced as such as appropriate in the text of the bill.

Section 203(b). This section has been deleted as unnecessary in light of the change made to the defined term "reservation". The Committee notes, however, that the inclusion of Alaska Native villages and regional and village corporations in the definition of "Indian tribe" and references in this bill to land held by any Alaska Native village or regional or village corporation is solely to further the bill's purpose of improving local Native American economies and to ensure that Alaska Natives share on an equal basis with other Native Americans in the beneficial programs authorized. The Committee does not intend for the Congress, by virtue of this Act, to validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

Section 203(5)(A). "Indian business enterprise" has been broadened to include "Indians" in addition to "Indian tribes". Indians who are members of tribes that are shareholders in the Corporation may transact business directly with the Corporation and are eligible for its services.

Section 214(b). The board shall consist of 15 members. Thirteen shall be appointed by the President of the United States for staggered four year terms; at least 7 members shall be Indians, and no more than 7 may be members of the same political party. The makeup of the other two board members has not changed, and will consist of an officer of the United States Government designated by the Secretary of the Interior, and a President of the Board, who will be appointed by the Board. Previously the Board consisted of 21 members who would be initially appointed by the President but who would be replaced at the first annual meeting of shareholders of the Corporation. The makeup of the Board has been changed in response to a concern raised by the U.S. Department of Justice that S. 721 would have been in violation of the appointments clause and therefore unconstitutional.

The Administration was also critical of the Board being made up of shareholders while the United States was the major stockholder.

It was felt that a Board made up of shareholder representatives would not exercise full responsibility and caution in making Corporation policy and decisions. Presidential appointments assure that the interests of the U.S. Government will be represented in the Corporation.

Consistent with this fundamental change, the powers previously given to the Board Member designated by the Secretary of the Interior have been deleted. S. 721, as passed by the Senate, would have given this member 20 percent of the share of votes cast at annual shareholders meetings. The member could further be overruled only by a two-thirds majority vote of other members at meetings on certain issues. The legislation reflects the change in board makeup, which will now represent the interests of the President. Decisions made at the annual shareholders meeting by shareholders can only be overturned by the Board by a two-thirds vote.

Section 231(b)(1). The Corporation shall make an initial offering of a total of 2,100,000 shares of common stock of the Corporation for sale at $50 per share to Indian tribes. Originally, the proposal authorized 500,000 shares to be sold to the tribes. The number of shares available to the federal government remains at 2,000,000. This allows the Indian tribes to purchase 51% of the stock of the Corporation, which allows the tribes ultimately to buy controlling interest in the Corporation.

## Cost and Budgetary Considerations

The cost estimate of H.R. 3621, as evaluated by the Congressional Budget Office, is set forth below:

U.S. Congress,
Congressional Budget Office,
*Washington, DC, September 30, 1988.*

Hon. Daniel K. Inouye,
*Chairman, Select Committee on Indian Affairs,*
*U.S. Senate, Washington, DC.*

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3621, the Southern California Indian Land Transfer Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
*Acting Director.*

### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3621.
2. Bill title: Southern California Indian Land Transfer Act.
3. Bill status: As ordered reported by the Senate Select Committee on Indian Affairs, September 29, 1988.
4. Bill purpose: Title I of H.R. 3621 would transfer approximately 5,100 acres of Federal land in San Diego County to 11 bands of the Mission Indians. Certain existing permit and lease rights to the land would be preserved and any person currently holding a valid grazing permit or lease would have one year to purchase land af-

fected by the transfer. The Secretary of the Interior would have 30 days after the bill's enactment to notify permit and lease holders of their right to purchase land. Any receipts from these land sales as well as receipts from all future activities on the land transferred to the Indian bands would be held in trust for their use.

Title II of the bill would establish the Indian Development Finance Corporation, a federally chartered corporation owned by both the Federal Government and Indian tribes. The corporation would provide member tribes and individual Indians with financial development assistance for Indian business enterprises through a combination of equity investments, direct loans, and loan guarantees. The corporation would be governed by a Board of Directors composed of 15 members, one of whom would be an officer of the U.S. Government designated by the Secretary of the Interior. The bill contains a number of mechanisms for Federal Government oversight of the corporation, including requiring the corporation to report annually to the Congress, and requiring the creation of an advisory council composed of certain Federal officials.

The bill authorizes the Secretary of the Interior to subscribe to 2,000,000 shares of stock in the corporation, and requires the Secretary to pay $20 million (representing 20 percent of the value of the stock) to the corporation within two years of the bill's enactment. The bill authorizes the appropriation of $10 million for each of fiscal years 1989 and 1990 for this purpose. The bill also authorizes the Secretary, beginning in 1991 and subject to appropriation, to agree to pay up to $80 million to the corporation upon call for establishment of a reserve for loss. The bill authorizes the appropriation of $80 million beginning in fiscal year 1991 for this purpose. The bill also authorizes appropriations of $2.5 million in each of fiscal years 1989 through 1993 for project development activities, and $2 million in 1989 and such sums as may be necessary in 1990 and 1991 for operating expenses.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

| | 1989 | 1990 | 1991 | 1992 | 1993 |
|---|---|---|---|---|---|
| Estimated authorization level | 15 | 15 | 95 | 25 | 30 |
| Estimated outlays | 5 | 15 | 20 | 20 | 25 |

The costs of this bill fall within budget function 450.

*Basis of Estimate*

The estimated authorization level and outlays shown above reflect both the Federal Government's contributions to the Indian Development Finance Corporation established in Title II and the activities of the corporation. As a mixed-ownership corporation, the net financial effects of the corporation's activities would be on-budget.

The estimate assumes that the amounts authorized in the bill for operating expenses, project development, and the Federal Government's subscription to the corporation will be appropriated prior to the beginning of each fiscal year. The estimate of the spending au-

thority needed for operating expenses in 1990 and 1991 is based on the 1989 authorized level adjusted for inflation. The estimate reflects the appropriation of $80 million in budget authority in 1991 for callable capital, but assumes that only $8 million will be called upon by the corporation in that year.

The bill does not specify or indicate expected program levels for the various types of financial assistance to be provided by the corporation. The estimate assumes that after one year, loan guarantee commitments will reach $50 million per year, direct loan obligations will be $10 million per year, and equity investments will total $2.5 million per year. Estimated disbursement rates, repayments, defaults, fees, and other characteristics of the corporation's potential portfolio are based on historical experience in other programs.

We estimate that enactment of Title I of this legislation will not significantly affect the federal budget. Information from the Bureau of Land Management [BLM] indicates that the land to be transferred has a value of approximately $5 million. We do not expect the administrative costs to complete the transfer to be significant.

Based on information from the BLM, we do not expect that much of the land would be sold to current permit and lease holders; consequently, proceeds from these sales would not be significant. The Federal Government currently collects less than $3,000 annually from the lands affected by Title I. Under the terms of H.R. 3621, these receipts would no longer be deposited into the Federal Treasury but would be held in trust for use by the Indian bands.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 14, 1988, CBO prepared a cost estimate for H.R. 3621 as ordered reported by the Senate Select Committee on Indian Affairs on September 14, 1988. Title I of this bill and the estimate thereon are identical to the bill and the costs discussed in the previous estimate. On March 14, 1988, CBO prepared a cost estimate for S. 721 as ordered reported by the Senate Select Committee on Indian Affairs on March 3, 1988. The estimate of costs for Title II of this bill are identical to those identified in the previous estimate. Changes in the bill from the previous version are not estimated to affect the costs of the legislation.

9. Estimate prepared by: Carol Cohen.

10. Estimate approved by: (C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis).

## Regulatory Impact Statement

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that H.R. 3621 will have a minimal impact on regulatory or paperwork.

## EXECUTIVE COMMUNICATIONS

The Committee received the following communications from the U.S. Department of the Interior giving its views on H.R. 3621:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
*Washington, DC, September 19, 1988.*

Hon. DANIEL K. INOUYE,
*Chairman, Select Committee on Indian Affairs,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This responds to your request for our views on H.R. 3621, an act "To declare that certain lands located in California and held by the Secretary of the Interior are lands held in trust for the benefit of bands of Indians and to declare such lands to be a part of the reservations with which they are contiguous," as passed by the House of Representatives.

We oppose enactment of H.R. 3621.

It has been longstanding Departmental policy to support land transfers only in those cases in which fair market value is paid by the tribe. Indian tribes have no greater claim to free acquisition of public land than any other entity. H.R. 3621 does not require the tribes involved to pay the fair market value for certain lands now held by the Secretary of the Interior. We know of no reason for conveying the land in question without payment of fair market value. The estimated fair market value of these properties may be as much as $4 million. This is a significant sum which, if sold, the proceeds of sale would contribute to reducing the Federal deficit.

Additionally, we are concerned about the costs which would be incurred in meeting the requirement under section 3 to notify each eligible person of purchase rights.

ANALYSIS OF H.R. 3621

Section 1 of H.R. 3621 provides the short title "Southern California Indian Land Transfer Act."

Section 2 provides that subject to existing rights, all right, title, and interest of the United States in certain lands in California are to be held in trust by the United States for the benefit of certain bands or groups of Indians and that such lands are to be made part of their reservations. The lands to be transferred are generally described as "Lands identified in the Proposed So. California Indian Land Transfer Act" and depicted on the map entitled "Southern California Indian Land Transfer Act Map," May 1988. This section provides the following table which lists the names of the groups, the approximate acreage proposed to be transferred to each group, and the names of the reservations to which the lands would be made a part of:

| Bands or group of Missions Indians | Approximate acreage | Reservation |
|---|---|---|
| Barona Group of Captain Grande Band | 722.86 | Barona Ranch |
| Cahuilla Band | 611.88 | Cahuilla |
| Campo Band | 470.28 | Campo |
| La Jolla Band | 355.51 | La Jolla |
| La Posta Band | 84.20 | La Posta |
| Mesa Grande Band | 800.00 | Mesa Grande |
| Morongo Band | 107.00 | Morongo |
| Pala Band | 415.00 | Pala |
| Pechanga Band | 302.64 | Pechanga |

| Bands or group of Missions Indians | Approximate acreage | Reservation |
|---|---|---|
| Rincon Band | 320.00 | Rincon |
| Soboba Band | 880.0 | Soboba |

Section 2(b)(2) provides a legal description of the lands to be transferred pursuant to H.R. 3621.

Section 3 provides for the protection of existing rights or interests of any person which are in effect on the day before the date of enactment of H.R. 3621. Section 3 also provides that any person who holds a valid grazing permit and lease shall have the right to purchase such land within a one-year period beginning on the date of the enactment of this Act for the fair market value of such land. The Secretary is to notify each eligible person of their right to purchase under this provision. Proceeds of sale of such lands would be held in trust by the Secretary of the Interior for the benefit of the Band or group of Indians for whose benefit the land would be held in trust. Proceeds from rents and royalties which accrue to the United States after the date of enactment would be held in trust by the Secretary for use, with the Secretary's approval, by the tribe for whose benefit the land is held in trust.

Finally, section 3 provides that the lands taken into trust will be subject to laws of the United States relating to Indian land to the same extent and in the same manner as other lands already held in trust for the tribe.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

W.P. RAGSDALE,
*Acting Assistant Secretary.*

## CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that there are no changes in existing law made in H.R. 3621.

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